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SENATE BILL NO. 1086

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 2, 2011)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 58.1-2401, 58.1-2402, and 58.1-2403 of the Code of Virginia, relating to exemptions from the motor vehicle sales and use tax.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2401, 58.1-2402, and 58.1-2403 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2401. Definitions.

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Commissioner" shall mean the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Daily rental vehicle" shall mean a motor vehicle, except a motorcycle or a manufactured home as defined in § 46.2-100, used for rental as defined in this section and for the transportation of persons or property, whether on its own structure or by drawing another vehicle or vehicles.

"Department" shall mean the Department of Motor Vehicles of this Commonwealth, acting through its duly authorized officers and agents.

"Gross proceeds" shall mean the charges made or voluntary contributions received for the rental of a motor vehicle where the rental or lease agreement is for a period of less than twelve months.

"Mobile office" shall mean an industrialized building unit not subject to the federal regulation, which may be constructed on a chassis for the purpose of towing to the point of use and designed to be used with or without a permanent foundation, for commercial use and not for residential use; or two or more such units separately towable, but designed to be joined together at the point of use to form a single commercial structure, and which may be designed for removal to, and installation or erection on other sites.

"Motor vehicle" shall mean every vehicle, except for mobile office as herein defined, which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle, including manufactured homes as defined in § 46.2-100 and every device in, upon and by which any person or property is, or can be, transported or drawn upon a highway, but excepting devices moved by human or animal power, devices used exclusively upon stationary rails or tracks and vehicles, other than manufactured homes, used in this Commonwealth but not required to be licensed by the Commonwealth.

"Qualified plug-in electric drive vehicle" means a vehicle that (i) is made by a manufacturer and manufactured primarily for use on public streets, roads, and highways; (ii) has four wheels; (iii) has not been modified from original manufacturer specifications; (iv) is acquired for use or lease and not for resale; (v) is rated at 8,500 pounds unloaded gross vehicle weight or less; (vi) has a maximum speed capability of at least 55 miles per hour; and (vii) is propelled to a significant extent by an electric motor that draws electricity from a battery, which has a capacity of not less than four kilowatt hours and is capable of being recharged from an external source of electricity.

"Rental" shall mean the transfer of the possession or use of a motor vehicle, whether or not the motor vehicle is required to be licensed by the Commonwealth, by a person for a consideration, without the transfer of the ownership of such motor vehicle, for a period of less than twelve months. Any fee arrangement between the holder of a permit issued by the State Corporation Commission or the Department for taxicab services and the driver or drivers of such taxicabs shall not be deemed a rental under this section.

"Rental in the Commonwealth" shall mean any rental where a person received delivery of a motor vehicle within the Commonwealth. The term "Commonwealth" shall include all land or interest in land within the Commonwealth owned by or conveyed to the United States of America.

"Rentor" shall mean a person engaged in the rental of motor vehicles for consideration as defined in this section.

"Sale" shall mean any transfer of ownership or possession, by exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle. The term shall also include a transaction whereby possession is transferred but title is retained by the seller as security. The term shall not include a transfer of ownership or possession made to secure payment of an obligation, nor shall it include a refund for, or replacement of, a motor vehicle of equivalent or lesser value pursuant to the Virginia Motor Vehicle Warranty Enforcement Act (§ 59.1-207.9 et seq.). Where the replacement motor vehicle is of greater value than the motor vehicle replaced, only the difference in value shall constitute a

60 sale.

61 "Sale price" shall mean the total price paid for a motor vehicle and all attachments thereon and
62 accessories thereto, as determined by the Commissioner, exclusive of any federal manufacturers' excise
63 tax, without any allowance or deduction for trade-ins or unpaid liens or encumbrances. However, "sale
64 price" shall not include the cost of controls, lifts, automatic transmission, power steering, power brakes
65 or any other equipment installed in or added to a motor vehicle which is required by law or regulation
66 as a condition for operation of a motor vehicle by a handicapped person.

67 § 58.1-2402. Levy.

68 A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law,
69 a tax upon the sale or use of motor vehicles in Virginia, other than (i) vehicles with a gross vehicle
70 weight rating or gross combination weight rating of 26,001 pounds or more, or (ii) a sale to or use by a
71 person for rental as an established business or part of an established business or incidental or germane to
72 such business.

73 There shall also be levied a tax upon the rental of a motor vehicle in Virginia, without regard to
74 whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be
75 levied upon a rental to a person for re-rental as an established business or part of an established
76 business, or incidental or germane to such business.

77 The amount of the tax to be collected shall be determined by the Commissioner by the application of
78 the following rates against the gross sales price or gross proceeds:

79 1. Three percent of the sale price of each motor vehicle sold in Virginia. If such motor vehicle is a
80 manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such
81 manufactured home sold in this Commonwealth; if such vehicle is a mobile office as defined in
82 § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in this
83 Commonwealth.

84 2. Three percent of the sale price of each motor vehicle, or three percent of the sale price of each
85 manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as
86 defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. When any
87 such motor vehicle or manufactured home is first used or stored for use in Virginia six months or more
88 after its acquisition, the tax shall be based on its current market value.

89 3. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those
90 with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

91 4. In addition to the tax levied pursuant to subdivision A 3, a tax of four percent of the gross
92 proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle
93 is required to be licensed in the Commonwealth.

94 5. In addition to all other applicable taxes and fees, a fee of two percent of the gross proceeds shall
95 be imposed on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required
96 to be licensed in the Commonwealth. For purposes of this chapter, the rental fee shall be implemented,
97 enforced, and collected in the same manner that rental taxes are implemented, enforced, and collected.

98 6. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be \$35,
99 except as provided by those exemptions defined in § 58.1-2403.

100 B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall
101 the same transaction be taxed more than once under either subdivision. A motor vehicle subject to the
102 tax imposed under subdivision A 3 shall be subject to the tax under either subdivision A 1 or A 2 when
103 it ceases to be used for rental as an established business or part of an established business, or incidental
104 or germane to such business.

105 C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision A 1 or A 2 of
106 § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no
107 longer owned, rented or used by the United States government or any governmental agency, or the
108 Commonwealth of Virginia or any political subdivision thereof. Further, any motor vehicle, trailer or
109 semitrailer exempt from the tax imposed by this chapter under subdivision A 11 of § 58.1-2403 or
110 §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such
111 vehicle is subsequently licensed to operate on the highways of this Commonwealth.

112 D. Any person who with intent to evade or to aid another person to evade the tax provided for
113 herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for
114 title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this
115 title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

116 E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged
117 by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to
118 subdivision A 10 of § 46.2-1530, shall be subject to the tax.

119 § 58.1-2403. Exemptions.

120 A. No tax shall be imposed as provided in § 58.1-2402 if the vehicle is:

121 1. Sold to, rented or used by the United States government or any governmental agency thereof;

2. Sold to, rented or used by the Commonwealth of Virginia or any political subdivision thereof;
3. Registered in the name of a volunteer fire department or rescue squad not operated for profit;
4. Registered to any member of the Mattaponi, Pamunkey, or Chickahominy Indian tribes or any other recognized Indian tribe of the Commonwealth living on the tribal reservation;
5. Transferred incidental to repossession under a recorded lien and ownership is transferred to the lienholder;
6. A manufactured home permanently attached to real estate and included in the sale of real estate;
7. A gift to the spouse, son, or daughter of the transferor. With the exception of a gift to a spouse, this exemption shall not apply to any unpaid obligation assumed by the transferee incidental to the transfer;
8. Transferred from an individual or partnership to a corporation or limited liability company or from a corporation or limited liability company to an individual or partnership if the transfer is incidental to the formation, organization or dissolution of a corporation or limited liability company in which the individual or partnership holds the majority interest;
9. Transferred from a wholly owned subsidiary to the parent corporation or from the parent corporation to a wholly owned subsidiary;
10. Being registered for the first time in this Commonwealth and the applicant holds a valid, assignable title or registration issued to him by another state or a branch of the United States Armed Forces and (i) has owned the vehicle for longer than 12 months or (ii) has owned the vehicle for less than 12 months and provides evidence of a sales tax paid to another state. However, when a vehicle has been purchased by the applicant within the last 12 months and the applicant is unable to provide evidence of a sales tax paid to another state, the applicant shall pay the Virginia sales tax based on the fair market value of the vehicle at the time of registration in Virginia;
11. a. Titled in a Virginia or non-Virginia motor vehicle dealer's name for resale; or
b. Titled in the name of an automotive manufacturer having its headquarters in Virginia, except for any commercially leased vehicle that is not described under subdivision 3 of § 46.2-602.2. *Any vehicle titled in the name of an automotive manufacturer having its headquarters in Virginia that is exempt from tax under this subdivision shall also be exempt from the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).* For purposes of this subdivision, "automotive manufacturer" and "headquarters" means the same as such terms are defined in § 46.2-602.2;
12. A motor vehicle having seats for more than seven passengers and sold to an urban or suburban bus line the majority of whose passengers use the buses for traveling a distance of less than 40 miles, one way, on the same day;
13. Purchased in the Commonwealth by a nonresident and a Virginia title is issued for the sole purpose of recording a lien against the vehicle if the vehicle will be registered in a state other than Virginia;
14. A motor vehicle designed for the transportation of 10 or more passengers, purchased by and for the use of a church conducted not for profit;
15. Loaned or leased to a private nonprofit institution of learning, for the sole purpose of use in the instruction of driver's education when such education is a part of such school's curriculum for full-time students;
16. Sold to an insurance company or local government group self-insurance pool, created pursuant to § 15.2-2703, for the sole purpose of disposition when such company or pool has paid the registered owner of such vehicle a total loss claim;
17. Owned and used for personal or official purposes by accredited consular or diplomatic officers of foreign governments, their employees or agents, and members of their families, if such persons are nationals of the state by which they are appointed and are not citizens of the United States;
18. A self-contained mobile computerized axial tomography scanner sold to, rented or used by a nonprofit hospital or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code;
19. A motor vehicle having seats for more than seven passengers and sold to a restricted common carrier or common carrier of passengers;
20. Beginning July 1, 1989, a self-contained mobile unit designed exclusively for human diagnostic or therapeutic service, sold to, rented to, or used by a nonprofit hospital, or a cooperative hospital service organization as described in § 501(e) of the United States Internal Revenue Code, or a nonprofit corporation as defined in § 501(c)(3) of the Internal Revenue Code, established for research in, diagnosis of, or therapy for human ailments;
21. Transferred, as a gift or through a sale to an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code, provided the motor vehicle is not titled and tagged for use by such organization;
22. A motor vehicle sold to an organization which is exempt from taxation under § 501(c)(3) of the

183 Internal Revenue Code and which is organized for the primary purpose of distributing food, clothing,
184 medicines and other necessities of life to, and providing shelter for, needy persons in the United States
185 and throughout the world;

186 23. A truck, tractor truck, trailer, or semitrailer, as severally defined in § 46.2-100, except trailers and
187 semitrailers not designed or used to carry property and vehicles registered under § 46.2-700, with a gross
188 vehicle weight rating or gross combination weight rating of 26,001 pounds or more, in which case no
189 tax shall be imposed pursuant to subdivisions 1 and 3 of subsection A of § 58.1-2402. *Any vehicle*
190 *exempt from tax under this subdivision shall also be exempt from the Virginia Retail Sales and Use Tax*
191 *Act (§ 58.1-600 et seq.);*

192 24. Transferred to the trustees of a revocable inter vivos trust, when the individual titleholder of a
193 Virginia titled motor vehicle and the beneficiaries of the trust are the same persons, regardless of
194 whether other beneficiaries of the trust may also be named in the trust instrument, when no
195 consideration has passed between the titleholder and the beneficiaries; and transferred to the original
196 titleholder from the trustees holding title to the motor vehicle;

197 25. Transferred to trustees of a revocable inter vivos trust, when the owners of the vehicle and the
198 beneficiaries of the trust are the same persons, regardless of whether other beneficiaries may also be
199 named in the trust instrument, or transferred by trustees of such a trust to beneficiaries of the trust
200 following the death of the grantor, when no consideration has passed between the grantor and the
201 beneficiaries in either case;

202 26. Sold by a vehicle's lessor to its lessee upon the expiration of the term of the vehicle's lease, if
203 the lessee is a natural person and this natural person has paid the tax levied pursuant to this chapter with
204 respect to the vehicle when he leased it from the lessor, and if the lessee presents an original copy of
205 the lease upon request of the Department of Motor Vehicles or other evidence that the sales tax has
206 been paid to the Commonwealth by the lessee purchasing the vehicle; or

207 27. Titled in the name of a deceased person and transferred to the spouse or heir, or under the will,
208 of such deceased person.

209 *B. 1. The taxes under subdivisions A 1 and A 2 of § 58.1-2402 shall not be imposed if the vehicle is*
210 *a qualified plug-in electric drive vehicle the use of which commences with the sale. No person, including*
211 *as a joint owner, shall be allowed more than 10 exemptions pursuant to this subsection for qualified*
212 *plug-in electric drive vehicles with a preponderance of use for business purposes. No person, including*
213 *as a joint owner, shall be allowed more than one exemption pursuant to this subsection for qualified*
214 *plug-in electric drive vehicles used for nonbusiness purposes. For any affiliated entity group, the*
215 *limitations herein shall apply to the group. For purposes of this subsection, "used for nonbusiness*
216 *purposes" means the same as such term is defined in § 58.1-3523.*

217 2. Any vehicle exempt from tax under this subsection shall also be exempt from the Virginia Retail
218 Sales and Use Tax Act (§ 58.1-600 et seq.).

219 3. The aggregate amount of exemptions allowed pursuant to this subsection shall not exceed \$1
220 million.

221 4. In order to be eligible for an exemption, a person who plans to purchase a qualified plug-in
222 electric drive vehicle shall apply to the Department of Taxation for a preapproval certificate prior to the
223 purchase of the vehicle. The Department of Taxation shall issue the certificates in the order that
224 applications are received, until exemptions totaling \$1 million have been issued. A preapproval
225 certificate shall be valid for 30 days from the date of issuance. A person who has received a
226 preapproval certificate shall present the certificate to the seller at the time of the purchase. The seller
227 shall return the preapproval certificate to the Department of Taxation after completion of the sale,
228 indicating on the certificate the purchase price of the qualified plug-in electric drive vehicle.

229 5. The Commissioner shall develop, maintain, and publish guidelines implementing the provisions of
230 this subsection. The guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

231 6. The provisions of this subsection shall expire on July 1, 2012.